Amendments

Rules 0400-06-02-.01, .02, .03 and .04 of Rule Chapter 0400-06-02 Rare Plant Protection and Conservation Regulations are amended by deleting them in their entirety and substituting the following so that, as amended, they shall read as follows:

0400-06-02-.01 Rare Plant Protection and Conservation-General

(1) General

(a) Purpose, Scope, and Applicability

The purpose of these regulations is to provide for the implementation of The Rare Plant Protection and Conservation Act which requires persons to obtain written permission from a landowner or manager before knowingly removing or destroying state-listed endangered plant species and requires nursery farmers to be licensed in order to sell state-listed endangered species.

(b) Use of Number and Gender

As used in these Rules:

1. Words in the masculine gender also include the feminine and neuter genders;

2. Words in the singular include the plural; and

3. Words in the plural include the singular.

(c) Rule Structure

These Rules are organized, numbered, and referenced according to the following outline form:

(1) paragraph

(a) subparagraph

1. part

(i) subpart

(l) item
I. subitem

A. section

(A) subsection

(2) Definitions

"Act" means "The Rare Plant Protection and Conservation Act of 1985," T.C.A. Section 70-8-301 et seq.

"Acquire," "Acquired", or "Acquisition" means to obtain, to have obtained, or the act of obtaining, by donation, or by exchange of money or other valuable consideration (specifically including barter or exchange), or to take as defined in these regulations.

"Commissioner" means the Commissioner of the Department of Environment and Conservation. "Conserve" or "Conservation" means to use, or the use of, all methods and procedures for the purpose of increasing the number of individuals of each resident species of plant up to levels adequate to assure their survival in their ecosystems; such methods and procedures also include all activities associated with scientific resource conservation such as research census, law enforcement, habitat protection, acquisition and maintenance, propagation, and transplantation into unoccupied parts of historic range.

"Department" means the Department of Environment and Conservation.

"Endangered species" means any species or subspecies of plant whose continued existence as a viable component of the state's flora is determined by the Commissioner to be in jeopardy, including but not limited to all species of plants determined to be "endangered species" pursuant to the Endangered Species Act.


"Habitat" means the place where a plant species grows, thus implying a particular set of environmental conditions conducive to its survival.

"Landowner" means the person having legal deed to a parcel of land, or a lessee, or any other person entitled to possession, or a manager in the case of publicly owned land.

"Nursery Farmer" means any person engaged in the practice of growing or propagating stock for sale.

"Nursery stock" means all trees, shrubs, or other perennial plants, or parts of such trees, shrubs, or other perennial plants grown or kept for, or capable of, propagation, distribution, or sale on a commercial basis.

"Person" means an individual, corporation, partnership, trust, association, or any other private entity, or any officer, agent, department, or instrumentality of the federal government, any state or political subdivision thereof, or any foreign government.

"Plant" means any member of the plant kingdom, including seeds, roots, cuttings, and other parts of the plant.
"Population" means individuals of a given plant species that are capable of interbreeding with one another via natural mechanisms, or are growing in close proximity, yet self-pollinating or reproducing strictly by vegetative means.

"Rare species" means any species of plant defined as endangered, threatened, or of special concern in Tennessee or pursuant to the Endangered Species Act.

"Sell" or "Sold" means to dispose of, transfer or convey, or to attempt to dispose of, transfer or convey by exchange of money or other valuable consideration, specifically including barter or exchange.

"Special Concern Species" means any species or subspecies of plant which is uncommon in Tennessee, or has unique or highly specific habitat requirements or scientific value and therefore requires careful monitoring of its status.

"Take" or "Taking" means to knowingly uproot, dig, remove, damage, destroy, possess, collect, or otherwise disturb for any purpose.

"Threatened Species" means any species or subspecies of plant which appears likely, within the foreseeable future, to become endangered throughout all or a significant portion of its range in Tennessee, including but not limited to all species of plants determined to be a "threatened species" pursuant to the Endangered Species Act.


0400-6-2-.02 (Reserved)


0400-6-2-.03 Promulgation of Lists

(1) Criteria for listing a rare plant as endangered, threatened, or of special concern, shall be primarily, but not limited to, the following:

(a) Distribution of the species in Tennessee and throughout its range;

(b) Number of populations in Tennessee and throughout the species' range;

(c) Size of populations relative to estimates of minimal viable populations for the species;

(d) Habitat specificity;

(e) Known or perceived threats to the species and its habitats;

(f) Number of protected populations;

(g) Difficulty of adequately protecting or managing habitats for the species' survival; and

(h) Biological factors relating to such things as the species' ability to reproduce, respond to disturbance, or its dependence on other species that also may be in jeopardy.

(2) Any interested person may nominate a plant species for listing as endangered, threatened, or special concern status or recommend changes in status or removal of species from the current rare plant list promulgated under the Act.
(3) A Scientific Advisory Committee of twelve (12) botanists knowledgeable about the state’s flora shall serve at the Commissioner's request to periodically review the rare plant list and consider nominations for changes to it. This group shall meet at least once every three (3) years. Reimbursement for travel and per diem expenses shall be offered by the Department at current state rates.

(4) A public hearing shall be held prior to the addition or deletion of a species to or from the endangered or threatened species lists.

(5) The Department shall submit its proposed list of endangered species or any amendments to it to the Commissioner of the Department of Agriculture for his concurrence.

(6) Copies of the current list of endangered species or the list of threatened or special concern species shall be made available, upon request, by the Department of Environment and Conservation, Division of Natural Areas, 401 Church Street, Nashville, Tennessee 37243-0447.


0040-6-2-.04 List of Endangered Species

The endangered plant list of Tennessee includes the following:

<table>
<thead>
<tr>
<th>Latin Name</th>
<th>Common Name</th>
</tr>
</thead>
<tbody>
<tr>
<td>Aconitum reclinatum A.</td>
<td>Gray trailing wolfsbane</td>
</tr>
<tr>
<td>Agalinis auriculata (Michx.)</td>
<td>Blake Earleaved false-foxglove</td>
</tr>
<tr>
<td>Agalinis oligophylla Pennell</td>
<td>Ridge-stem false foxglove</td>
</tr>
<tr>
<td>Agalinis plukenetii (Ell.) Raf</td>
<td>Purple gerardia</td>
</tr>
<tr>
<td>Allium stellatum Fraser</td>
<td>Glade onion</td>
</tr>
<tr>
<td>Anemone canadensis L.</td>
<td>Canada anemone</td>
</tr>
<tr>
<td>Anemone caroliniana Walt.</td>
<td>Carolina anemone</td>
</tr>
<tr>
<td>Apios priceana Robbins</td>
<td>Price's potato-bean</td>
</tr>
<tr>
<td>Arabis patens Sullivan</td>
<td>Spreading rockcress</td>
</tr>
<tr>
<td>Arabis perstellata L. Braun</td>
<td>Braun's rockcress</td>
</tr>
<tr>
<td>Arenaria lanuginosa (Michx.) Rohrbach</td>
<td>Wooly sandwort</td>
</tr>
<tr>
<td>Aristida ramosissima Engel. ex Gray</td>
<td>Branched three-awn grass</td>
</tr>
<tr>
<td>Asplenium scolopendrium L. var. americanum</td>
<td>Hart's-tongue fern</td>
</tr>
<tr>
<td>(Fern.) Kartesz &amp; Gandhi</td>
<td></td>
</tr>
<tr>
<td>Astilbe crenatiloba (Britt.) Small</td>
<td>Crenate-lobed false goat's-beard</td>
</tr>
<tr>
<td>Astragalus bissulatus Barneby and Bridges</td>
<td>Pyne's ground-plum</td>
</tr>
<tr>
<td>Betula papyrifera Marsh var. cordifolia (Regel) Fern.</td>
<td>Heart-leaved paper birch</td>
</tr>
<tr>
<td>Brachydontium trichodes (Web.) Milde</td>
<td>Peak moss</td>
</tr>
<tr>
<td>Bulbostylis ciliatifolia (Ell.) Fern. var. coarctata (Ell.) Kral</td>
<td>Capillary hairsedge</td>
</tr>
<tr>
<td>Calamagrostis canii Hitchcock</td>
<td>Cain's reedgrass</td>
</tr>
<tr>
<td>Calamagrostis porteri A. Gray</td>
<td>Porter's reedgrass</td>
</tr>
<tr>
<td>Calamovilfa arcuata K.E. Rogers</td>
<td>Cumberland sandgrass</td>
</tr>
<tr>
<td>Calopogon oklahomensis D.H. Goldman</td>
<td>Oklahoma grass-pink</td>
</tr>
<tr>
<td>Caltha palustris L.</td>
<td>Marsh marigold</td>
</tr>
<tr>
<td>Carex alopecoidea Tuckerm.</td>
<td>Foxtail sedge</td>
</tr>
<tr>
<td>Carex barrattii Schweinitz and Torr.</td>
<td>Barratt's sedge</td>
</tr>
<tr>
<td>Carex manhartii Bryson</td>
<td>Manhart's sedge</td>
</tr>
<tr>
<td>Carex muskingumensis Schweinitz</td>
<td>Muskingum sedge</td>
</tr>
<tr>
<td>Carex pellita Wild.</td>
<td>Woolly sedge</td>
</tr>
</tbody>
</table>
Carex roanensis Hermann  Roan mountain sedge
Carex sterilis Willd.  Sterile sedge
Carex utriculata Boott.  Northwest Territory sedge
Carex vestita Willd.  Velvety sedge
Cephaloziella messalongi (Spruce) K. Muell.  a liverwort
Cerastium velutinum Raf.  Velvety cerastium
Clematis glaucophylla Small  White-leaved leatherflower
Clematis morefieldii Kral  Huntsville vasevine
Clethra alnifolia L.  coastal pepperbush
Coeloglossum viride (L.) Hartman  var. virescens (Muhl. ex Willd.) Luer  Long-bracted green orchis
Collinsia verna Nutt.  Spring blue-eyed Mary
Comptonia peregrina (L.) Coulter  Sweet-fern
Coreopsis latifolia Michx.  Broad-leaved tickseed
Coreopsis dolichophylla Lam.  Larkspur-leaved coreopsis
Corydalis sempervirens (L.) Pers.  Pale corydalis
Craega sempervirens (L.) Willd.  Harbison's hawthorn
Crotalaria purshii DC.  Pursh's rattlebox
Croton alabamensis E.A. Smith  Alabama croton
Cypripedium kentuckiense Reed  Southern lady's-slipper
Cypripedium reginae Walt.  Showy lady's-slipper
Dalea foliosa (A. Gray) Barneby  Leafy prairie-clover
Dalea purpurea Vent.  Purple prairie-clover
Delphinium exaltatum Ait.  Tall larkspur
Desmodium ochroleucum M.A. Curtis ex Canby  Creamflower tick-trefoil
Diamorpha smallii Britt.  Small's stonecrop
Dichanthelium aciculare (Desv. ex Poir.) Gould & C.A. Clark  Needleleaf witchgrass
Dichanthelium acuminatum subsp. spretum (Schult.) Freckmann & Lelong  Eaton's witchgrass
Dichanthelium ensifolium subsp. curtifolium (Nash) Freckmann & Lelong  Short-leaved panic grass
Echinacea tennesseensis (Beadle) Small  Tennessee coneflower
Eleocharis equisetoides (Ell.) Torr.  Horse-tail spike-rush
Eleocharis intermedia J.A. Schultes  matted spike rush
Eleocharis wolfii A. Gray  Wolf's spike rush
Elymus svensonii Church  Svenson's wild-rye
Eriocaulon decangulare L.  Ten-angle pipewort
Eriogonum longifolium Nutt.  Harper's umbrella-plant
var. harperi (Goodm.) Reveal  tawny cotton grass
Eriophorum virginicum L.  Western wallflower
Erysimum capitatum (Dougl.) Greene  White-bracted thoroughwort
Eupatorium leucolepis (DC.) Torr. and A. Gray  Rockcastle aster
Eurybia saxicastelli (J. J. N. Campbell & Medley) G. L. Nesom  Shortleaf sneezeweed
Fimbristylis perpusilla Harper  Harper's fimbriystilis
Gentiana puberulenta J.S. Pringle  Prairie gentian
Geum virginicum Michx.  Bent avens
Geum radiatum Michx.  Spreading avens
Gratiola floridana Nutt.  Florida hedge-hyssop
Hedyotis purpurea (L.) Torr. & A.Gray  Roan Mountain bluet
var. montana (Small) Fosberg
Helenium brevifolium (Nutt.) Wood  Plains frostweed
Helianthemum canadense (L.) Michx.  
Helianthemum propinquum E.P. Bicknell  
Helianthus verticillatus Small  
Homaliadelphus sharpii (Williams) Sharp  
Hydrocotyle americana L.  
Hypericum adpressum Barton  
Hypericum ellipticum Hook.  
Hypericum graveolens Bickl.  
Iris brevicaulis Raf.  
Isoetes melanopoda Gay and Durieu  
Isoetes tennesseensis N.T. Luebke & J.M. Budke  
Isotria medeoloides (Pursh) Raf.  
Juncus trifidus L. var. carolinianus Hamet-Ahti  
Kalmia angustifolia L. var. carolina (Small) Fern.  
Lachnanthes caroliana (Lam.)  
Lachnocaulon anceps (Walt.) Morong  
Leavenworthia exigua Rollins var. lutea Rollins  
Lechea pulchella Raf.  
Lejeunea sharpii (Schust.) Schust.  
Leptodonium viticulosoides var. sulphureum (Müller Hal.) R. H. Zander  
Leptohymenium sharpii (Crum & Anders.) Buck & Crum  
Leptoscyphus cuneifolius (Hook.) Mitt.  
Lesquerella globosa (Desv.) S. Watson  
Lesquerella perforata Rollins  
Lilium grayi S. Wats.  
Lilium philadelphicum L.  
Linnaea borealis Michx.  
Listera australis Lindl.  
Lonicera prolifera (Kirchner) Rehder  
Lycopodium annotinum L.  
Lysimachia fraseri Duby  
Lysimachia terrestris (L.) BSP.  
Maianthemum stellatum (L.) Link  
Marshallia grandiflora Beadle and Boynton  
Marsupella funckii (Web. & Mohr) Dumort.  
Melanthium latifolium Desr.  
Melanthium virginicum L.  
Melanthium woodii (J.W. Robbins ex Wood) Bodkin  
Minuartia cumberlandensis (Wofford & Kral) McNeill  
Minuartia godfreyi (Shinners) McNeill  
Minuartia groenlandica (Retzius) Ostenfeld  
Muhlenbergia cuspidata (Torr.) Rydb.  
Muhlenbergia torreyana (Shult.) Hitchcock  
Nestria umbellula Raf.  
Onosmodium hispidissimum Mack.  
Onosmodium molle Michx. ssp subsetosum (Mack & Bush) Cochrane  
Paxistima canbyi A. Gray  
Perideridia americana (Nutt. ex DC.) Reichenb.  
Pityopsis ruthii (Small) Small  
Plantago cordata Lam.  
Canada frostweed  
low frostweed  
Whorled sunflower  
Sharp’s homaliadelphus  
American water-pennywort  
Creeping St. John’s-wort  
Pale St. John’s-wort  
Mountain St. John’s-wort  
Lamance iris  
Blackfoot quillwort  
Hiwassee quillwort  
Small whorled pogonia  
Highland rush  
Sheep-laurel  
Dandy Carolina redroot  
Bog-buttons  
Pasture glade-cress  
Leggett’s pinweed  
Sharp’s lejeunia  
Grandfather mountain leptodontium  
Mount Leconte moss  
a liverwort  
Short’s bladderpod  
Spring Creek bladderpod  
Stones River bladderpod  
Gray’s lily  
Wood lily  
Twinflower  
Southern twayblade  
Grape honeysuckle  
Stiff clubmoss  
Fraser’s loosestrife  
Swamp loosestrife  
Starflower false Solomon’s-seal  
Large-flowered Barbara’s-buttons  
a liverwort  
Broadleaf bunchflower  
Virginia bunchflower  
Ozark bunchflower  
Cumberland sandwort  
Godfrey’s stitchwort  
Mountain sandwort  
Plains muhly  
Torrey’s dropseed  
Nestria  
Shaggy false gromwell  
Smooth false gromwell  
Canby’s mountain-lover  
Thicket parsley  
Ruth’s golden-aster  
Heart-leaved plantain
Platanthera grandiflora (Bigelow) Lindl.  Large purple fringed orchid
Platanthera integra (Nutt.) A. Gray ex Beck  Yellow fringeless orchid
Platanthera integrilabia (Correll) Luer  White fringeless orchid
Platanthera nivea (Nutt.) Luer  Snowy orchid
Poa palustris L.  owl bluegrass
Pogonia ophioglossoides (L.) Ker-Gawl.  Nuttall's milkwort
Polygala nana (Michx.) DC.  Dwarf milkwort
Polygala nuttallii Torr. and A. Gray  Small Southern jointweed
Polygonella americana (Fisch. and Mey) Mohr  Shadow-witch
Porella sp. nov. (sp. 1)  Hot porella
Prenanthes aspera Michx.  Rough rattlesnake-root
Pynolactonum beadlei (Small) Fern.  Beadle's mountain mint
Prenanthes crepidinea Michx.  Nodding rattlesnake-root
Pycnanthemum verticillatum (Michx.) Pers.  Whorled mountain-mint
Pyrola americana Sweet  Eastern white water crowfoot
Rhamnus alnifolia L'Her.  Alderleaf buckthorn
Rhynchosia latifolia Nutt.  Prairie rhynchosia
Rhynchospora alba (L.) Vahl  White beakrush
Rhynchospora capillacea Torr.  Horned beakrush
Rhynchospora latifolia (Baldw.) Thomas  Giant white-top sedge
Rhynchospora rariflora (Michx.) Ell.  Few-flowered beak-rush
Rhynchospora wrightiana Boeckler  Wright's beak-rush
Rudbeckia triloba L. var. pinnatifolia Torrey & A. Gray  Browneyed Susan
Rugelia nudicaulis Shuttlw. ex Chapman  Rugel's ragwort
Sabatia capitata (Raf.) Blake  Swamp pitcher plant
Sanguisorba canadensis L.  Canada burnet
Sarracenia oreophila (Kearney) Wherry  Green pitcher plant
Saxifraga caroliniana A. Gray  Carolina saxifrage
Saxifraga pensylvanica L.  Swamp saxifrage
Schwalbea americana L.  Chaffseed
Scutellaria arguta Buckl.  Narrow-leaved meadow-sweet
Sedum nevii A. Gray  Hairy scullcap
Seymeria cassioides (J.F. Gmelin) Blake  Seymeria
Sida hermaphrodita (L.) Rusby  Virginian mallow
Silene ovata Pursh  Ovate catchfly
Silene regia Sims  Royal catchfly
Silphium brachiatum Gattinger  Narrow-leaved meadow-sweet
Silphium wasiotsense Medley  Virginia spiraea
Solidago gattingeri Chapm.  Gattinger's goldenrod
Solidago lancifolia Torr. and A. Gray  Broadleaf goldenrod
Solidago ptarmicoides (Nees) Bovin  Prairie goldenrod
Solidago rupestris Raf.  Rock goldenrod
Solidago spithamaea M.A. Curtis  Blue ridge goldenrod
Sparganium androcladum (Engelm.) Morong  Branching bur-reed
Sphenolobopsis pearsonii (Spruce) Shust. & Kitag.  Sphenolobopsis
Spiraea alba DuRoi  Narrow-leaved meadow-sweet
Spiraea virginiana Britt.  Virginia spiraea
Spiranthes ochroleuca (Rydb.) Rydb.  Yellow nodding ladies'-tresses
Spiranthes odorata (Nutt.) Lindl.  Sweetscent ladies'-tresses
Stellaria alsine Grimm  Trailing stitchwort
Stellaria longifolia Muhl.  Longleaf stitchwort
Stenanthium diffusum Wofford
Sullivantia sullivantii (Torr. & Gray) Britt.
Symphyotrichum praealtum (Poiret) G. L. Nesom
Symphyotrichum pratense (Rafinesque) Nesom
Symlocarpus foetidus (L.) Nutt.
Taxus canadensis Marsh.
Tetragonothea helianthoides L.
Thaspium pinnatifidum (Buckley) A. Gray
Thelypteris simulata (Davenport) Nieuwl.
Tortula ammonsiana Crum & Anders.
Tortula fragilis Tayl.
Triantha racemosa (Walter) Small
Trichophorum cespitosum (L.) Hartman
Trifolium calcaricum J.L. Collins & Wieboldt
Trifolium reflexum L.
Trillium decumbens Harbison
Trillium lancifolium Raf.
Trillium pusillum Michx.
Trillium rugelii Rendle
Utricularia cornuta Michx.
Vaccinium elliottii Chapm.
Veronica catenata Pennell
Veronica scutellata L.
Viburnum bracteatum Rehd.
Viburnum molle Michx.
Vitis rupestris Scheele
Xyris ambiguа Beyr. ex. Kunth.
Xyris fimbriata Ell.
Xyris tennesseensis R. Kral
Zigadenus glaucus Nutt.

Cumberland featherbells
Sullivantia
Willow aster
Barrens silky aster
Skunk-cabbage
American yew
Pineland squarehead
Cutleaf meadow parsnip
Bog fern
Ammon’s tortula
Fragile tortula
Coastal false-aspodel
Tufted club-rush
Running glade clover
Buffalo clover
Trailing trillium
Narrow-leaved trillium
Least trillium
Southern nodding trillium
Horned bladderwort
Mayberry
Sessile water-speedwell
Marsh-speedwell
Limerock arrowwood
Softleaf arrow-wood
Rock grape
Coastal-plain yellow-eyed-grass
Fringed yellow-eyed-grass
Tennessee yellow-eyed-grass
White camas


The rulemaking hearing rules set out herein were properly filed in the Department of State on the 30th day of May, 2008, and will become effective on the 13th day of August, 2008. (FS05-19-08; DBID 2890)

Economic Impact Statement

(1) Type or types of small business and an identification and estimate of the number of small businesses subject to the proposed rule that would bear the cost of, and/or directly benefit from the proposed rule:

Type or types of small business: Any nursery farmer selling or exporting Tennessee listed endangered plants.
Estimate of the number of small businesses:

There are approximately 9 endangered plant dealers in Tennessee. It is unknown as to how many would qualify as a small business since the number of employees for each is unknown.

(2) The projected reporting, recordkeeping and other administrative costs required for compliance with the proposed rule, including the type of professional skills necessary for preparation of the report or record:

There are no new recordkeeping or reporting requirements or administrative costs contained in the amendments to rules 0400-06-02-.01, .02, .03 and .04.

(3) A statement of the probable effect on impacted small businesses and consumers:

The amendments to rules 0400-06-02-.01, .02, .03 and .04 will have little effect on small businesses due to the fact that very few nurseries sell native plants and those plants that are listed are for the most part very obscure species that are not popular in cultivation.

(4) A description of any less burdensome, less intrusive or less costly alternative methods of achieving the purpose and/or objectives of the proposed rule that may exist, and to what extent, such alternative means might be less burdensome to small business:

The amendments to rules 0400-06-02-.01, .02, .03 and .04 affect only a very small fraction of the nursery industry at present and the burden consists of one form to fill out each year. Any measures less burdensome would not achieve the purpose of the rule.

(5) A comparison of the proposed rule with any federal or state counterparts:

The Endangered Species Act of 1973 (16 U.S.C. 1531-1544) is much more stringent and comprehensive than the amendments to rules 0400-06-02-.01, .02, .03 and .04. The federal law covers fewer plant species in Tennessee but the regulations are more restrictive.

(6) Analysis of the effect of the possible exemption of small business from all or any part of the requirements contained in the proposed rule:

Removal of the rule would allow anyone to sell state-endangered plants without monitoring or restriction thus contributing to their decrease in the wild.